

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

May 6, 2004

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, May 6, 2004, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Ronald Marnell, Chair; Morris K. Dunlap, Vice-Chair; James Barfield; Bud Hentzen; John W. McKay Jr.; Bill Johnson; Elizabeth Bishop (In @ 1:39); M.S. Mitchell; Frank Garofalo and Darrell Downing. Bob Hernandez was not present. Staff members present were: John Schlegel, Director of Planning; Dale Miller, Current Plans Supervisor; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; and Rose Simmering, Recording Secretary.

MARNELL We have a zoning case, Item #6, withdrawn by the applicant. Also, the application for Conditional Use CON2004-16 has also been withdrawn, but it doesn't show up on the agenda.

1. Approval of April 8, 2004 meeting minutes.

MOTION: That the minutes for April 8, 2004 be approved.

MCKAY moved, **DOWNING** seconded the motion, and it carried (9-0).

2. Sedgwick County Capital Improvement Program 2005-2009, presentation by Peter Giroux, Senior Management Analyst, Budget; Jim Weber, Deputy Director, Sedgwick County Public Works; and Stephanie Knebel, Manager, Facility Project Services.

PETER GIROUX What you see today represents the recommendation to the County Manager. The Manager will then present these recommendations to the County Commission, and those hearings start on June 17th. Like the City, we have had some reduction in our budget and you are going to see some of that impact. We have asked our Departments to live with four percent reductions, as an example.

Our Road and Bridge program received 1/2 of one percent local sales tax, and we have supplemented that for the last few years with about four million in bonds, and our sales tax has declined since 2001, as you might have expected. We had over a five percent decline in 2003. During 2003, as we were developing our financial plan for this year, we were encouraged during the first six months as the difference between the previous year seemed to be declining.

We issued a revised plan in January, and that has a direct impact on the funds that we forecast that will be available for our public works. We forecast under \$20 million for the current year, and then a further decline of one percent in 2005, a one percent increase in 2006, five percent in 2007 and then two percent the last two years of the plan. This is a conservative forecast.

HENTZEN Are your people convinced that the state's distribution of the sales tax is correct? It seems like we have heard about it 2-3 years in a row now, but has it ever been resolved that they are doing it right?

GIROUX We have had an ongoing dialogue, and I have not participated in that dialogue but the Budget Director has talked to the state on a regular basis. I think that we are reasonably convinced that it is not necessarily an even flow but we think we are getting our fair share.

HENTZEN On that one slide the white things claim to be the 2003 forecast?

GIROUX That was the initial forecast.

HENTZEN The blue is what your forecast now?

GIROUX That is a revised forecast that we issued toward the beginning of the year.

HENTZEN I just think those two lines should be a lot closer. We are not that bad of forecasters are we?

GIROUX This is what our analysis was telling us. Again, it is a conservative approach to it and we hope we are wrong.

HENTZEN Can we really trust the state sales tax revenue; what they tell us?

GIROUX I have a reasonable level of confidence in the blue line. We have a former state budgeteer on our staff, and he is reasonably well connected.

DUNLAP The 1/2% of one percent of a sales tax, are there any other funds that will be available or applied for what we will see as projects?

GIROUX Again, we have supplemented the road and bridge program with about \$4 million in bonds. We also want to capture as much of other peoples money as possible. You will see some state funding, and some participation in KDOT projects.

MCKAY Is this just a report, update, or final presentation?

GIROUX We have been consulting with the Manager, and we have some changes in progress to the facilities side so there is a fair amount of movement there. So it is not the final form or recommendation to the Manager yet.

MCKAY Will we get a copy of that to review before you send it to him?

GIROUX You might get a copy when we send it to him, and again that will be available and we will give you a current update at any point that you like it.

MCKAY What I am saying, are we going to get the document that you are going to present to him to review?

SCHLEGEL There is no need for you to act on this Item today.

MCKAY I want to see the final document.

SCHLEGEL Then you would take an action to find that it was in conformance or not in conformance with the Comprehensive Plan, and we will get a copy of all that prior to that before we review it, other than seeing it up here. I assume that is what has happened in the past.

MCKAY No, it has not. That is why I am asking.

JIM WEBER We have put a fair amount of money in preventative maintenance work, so when you see this R140, and a couple of others, those repeat themselves every year. We don't specify what roads we are working on. We have a list that we work off of, but basically we try to do something to all of our permanent pavements every five years.

MARNELL We've seen this presentation very recently. Could you highlight what is different from the last presentation?

WEBER The last presentation was to the Advance Plans Committee and not to the entire MAPC.

MARNELL This sure seems familiar.

WEBER One of the big projects is 63rd Street South, from Buckner to Rock Road. We are working that project with the City of Derby. We are upgrading that from a 4-lane rural section to a multi-lane 4 or more lane arterial section with turn bays. Also 275 which is 63rd Street South, from Rock to the Butler County line, and this is one that we will snag some KDOT money, and that will be bid late 2005. KDOT will be bidding that. It will be a four lane arterial. Butler County has a project on their side of the line that goes from Rose Hill over to the county line, and when these two projects are completed we will have four lanes on 63rd all the way from Hydraulic to Rose Hill. We are showing right-of-way acquisition for the Northwest Bypass.

CITY EVACUATION 1:45-2:27 p.m.

MARNELL Item # 2 that was being reviewed, we will end that Item and they will be providing Commissioners with copies of the C.I.P. prior to coming back on our agenda, and it should be the completed Item at that point.

❖ SUBDIVISION ITEMS

3. Consideration of Subdivision Committee recommendations from the meeting of

3-1. SUB2004-08 – Revised Final Plat – REED'S COVE THIRD ADDITION, located east of 127th Street East on the south side of 21st Street North.

NOTE: The eastern portion of this unplatted site is located in the County adjoining Wichita's city limits and annexation is required. The eastern portion of the site is currently zoned SF-20, Single-Family residential and will be converted to SF-5, Single-Family Residential upon annexation.

STAFF COMMENTS:

- A. Prior to this plat being scheduled for City Council review, annexation of the eastern portion of the property will need to be completed. Upon annexation, the property will be zoned SF-5, Single-Family Residential.
- B. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted. **City Water and Sewer Department and OCI have requested an agreement which limits sewer connections based upon capacity.**
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved. A guarantee is needed.**

- E. **Traffic Engineering** has requested a petition for a left-turn lane.
- F. The applicant shall guarantee the paving of the private street to the urban street pavement standard. As private improvements, such guarantee shall not be provided through the use of a petition.
- G. **City Fire Department** has requested a 35-ft roadway be provided at the street entrance. In the event a median is used, a 20-ft roadway for ingress and 29-ft roadway for egress shall be provided. If a gated development is proposed, a siren-activation gate is needed.
- H. The paving guarantee shall also provide for sidewalks on one side of the loop street.
- I. A covenant shall be submitted regarding the private street, which sets forth ownership and maintenance responsibilities. The plat's text shall reference the platting of the reserve for private street purposes and shall state which specific lots are to access by the reserve.
- J. The reserves being platted as private streets shall be shown appropriate street names.
- K. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA - NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed."
- L. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- M. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- N. The drainage reserves "20" through "29" need to be referenced in the plat's text.
- O. **GIS** needs to comment on the plat's street names. **The entrance should be Clear Creek. The loop street should be Crooked Pine and Clear Creek.**
- P. A bold solid line is needed between the 21st St. North right-of-way line and Reserve C.
- Q. **County Surveying** advises that the benchmark needs a better description.
- R. The Applicant needs to verify the location of the pipeline easement indicated in the platting binder. The easement shall be shown if encumbering this plat, or verification provided that it is off-site or has been released.
- S. The plat's text shall include language that a drainage plan has been enveloped for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- T. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- U. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- V. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- W. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- X. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Y. Perimeter closure computations shall be submitted with the final plat tracing.
- Z. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.

- AA. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Westar Energy and SBC have requested additional easements.
- BB. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MARNELL moved, HENTZEN seconded the motion, and it carried (10-0).

3-2. **SUB2003-127 – Revised One-Step Final Plat – HARVEST RIDGE COMMERCIAL ADDITION, located on the north side of K-42, west of Maize Road**

NOTE: This is unplatted property located within the City of Wichita. The site has been approved for a zone change (ZON 2003-31) from SF-5, Single-Family Residential to LI, Limited Industrial subject to platting.

This revised plat has eliminated the portion of the site adjoining Maize Road.

STAFF COMMENTS:

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted. A utility easement is needed for the proposed sewer line.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. Since drainage will be directed onto K-42, a letter shall be provided from KDOT indicating their agreement to accept such drainage.
- E. Traffic Engineering has requested a cross-lot access agreement with the property to the east.
- F. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed."
- G. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- H. Based upon the platting binder, property taxes are still outstanding. Before the plat is scheduled for City Council consideration, proof shall be provided indicating that all applicable property taxes have been paid.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.

- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. SBC has requested additional easements.
- R. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MARNELL moved, **HENTZEN** seconded the motion, and it carried (10-0).

3-3. SUB2004-45 – One-Step Final Plat – VOGELI SECOND ADDITION, located on the north side of Harry, east of West Street.

Note: This is an unplatted site located within the City. This segment of Harry is classified as a collector and access controls are not required.

STAFF COMMENTS:

- A. Municipal services are available to serve the site.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. Improvements are required at time of site development.
- D. A Block shall be designated on the face of the plat as referenced in the plat's text.
- E. County Surveying has requested measured right-of-way dimensions.
- F. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- G. The reference to access controls in the plat's text may be deleted.
- H. The platting binder indicates a party holding a mortgage on the site. This party's name must be included as a signatory on the plat, or else documentation provided indicating that such mortgage has been released.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City

of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.

- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. SBC requests additional easements.
- R. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MARNELL moved, **HENTZEN** seconded the motion, and it carried (10-0).

❖ **PUBLIC HEARING — VACATION ITEMS**

4-1. VAC2004-09 – Request to Vacate a Utility Easement and Utility/Drainage Easement

<u>OWNER/APPLICANT:</u>	Tim Malone
<u>LEGAL DESCRIPTION:</u>	Lot 8, Block 4, Woodlake 2 nd Addition
<u>LOCATION:</u>	Generally located north of Douglas, west of Meridian (Northeast corner of Mt. Carmel and Sheridan)
<u>REASON FOR REQUEST:</u>	To allow for existing house within a utility easement; to allow for proposed garage construction within a utility and drainage easement
<u>CURRENT ZONING:</u>	"MF-29" Multi-Family Residential; "MF-29" Multi-Family Residential to the north and east of subject property

The Applicant is requesting to vacate portion of a utility easement established by separate instrument along the eastern portion of the property to allow for the encroachment of an existing house. This vacation will require the relocation of an existing sewer line. The Applicant is also requesting to vacate the south 10 feet of a 20-ft drainage and utility easement platted along the north property line to allow for the construction of a garage. An administrative adjustment is needed for encroachment of the house into the zoning setback.

The applicant has also been advised that a variance is needed for the encroachment of the house into the street side setback along Sheridan.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 - 1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time March 18, 2004, which was at least 20 days prior to this public hearing.
 - 2. That no private rights will be injured or endangered by the vacation of the above-described street right-of-way, and the public will suffer no loss or inconvenience thereby.
 - 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the utility easement established by separate instrument, and the platted drainage and utility easement described in the petition should be approved subject to the following conditions:
 - 1. City Water and Sewer Department has required the relocation of the sewer line that is located within the utility easement prior to this case being forwarded to City Council. This relocation shall include two manholes located within the Mount Carmel street right-of-way.
 - 2. An off-site utility easement needs to be dedicated for relocation of the sewer line.
 - 3. An administrative adjustment needs to be approved for the encroachment of the house into the side yard setback.

4. **Utilities Representatives** need to comment on the acceptability of this vacation and any requirements.
5. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
6. All conditions shall be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval, subject to the following conditions:

1. **City Water and Sewer Department** has required the relocation of the sewer line that is located within the utility easement prior to this case being forwarded to City Council. This relocation shall include a manhole located within the southwest corner of Lot 7, Block 4, Woodlake 2nd Addition or within the Mount Carmel street right-of-way.
2. An off-site utility easement needs to be dedicated for relocation of the sewer line.
3. An administrative adjustment needs to be approved for the encroachment of the house into the side yard setback.
4. **Utilities Representatives** need to comment on the acceptability of this vacation and any requirements.
5. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
6. All conditions shall be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

NEIL STRAHL Planning staff presented the staff report. City Water and Sewer Department had requested a relocation of the sewer line to the adjoining property line to the east although that property owner objected to the construction of a manhole on his property. There was also a discussion regarding various alternate routes of the line, and Jerry Blain is here to discuss their recommended plan. That plan includes two manholes within the Mt. Carmel street right-of-way. Those manholes would be completely outside of the property to the east. There is a letter from the prospective homeowners of the vacation case in question, and that is in regards to the delay that they have encountered in regards to their property, and they are requesting a decision today.

The applicant has submitted letters to us this morning and these are from two local construction companies. The building contractors stated in their opinion that excavation for maintenance of the sewer line could be accomplished without damage to the house.

JOHNSON I was contacted by the future property owners, but I didn't receive any information to persuade me one way or the other.

DUNLAP I was also contacted by the future property owners, but I didn't receive any information to persuade me one way or the other, and I have not made a decision yet.

TIM MALONE Malone Construction I would like to call the Boards attention to the letters from licensed city contractors with the City Water and Sewer Department. If you'll note, both individuals state that trenching and removal of that line can be done with no problem. They operate on lines all the time closer than what this line is, and his comments to me were that it didn't make sense to be spending \$10,000 to move a line two feet that can be moved at any time without a problem. I am asking the vacation to be approved without any conditions for us to move the line, and grant us the vacation.

RICHARD JANNE, 1213 Dallas, Wichita, KS 67217 I'm homeless. I'd like to live at 101 north Mt. Carmel. I'm not here, in defense of Mr. Malone or the neighbors. I am here as a public record that I'd like to move into this house, and I am asking for swift action from you guys. The basic hold up on a lot of this is that we were asked by the City to sign a hold harmless agreement, and with a hold harmless agreement we couldn't obtain insurance. So that is where this has all come from. I'd like to say whether you give us the two feet, and we don't have to move it, we would be happy. If he moves the sewer line and has to pay to have it moved, we would be happy. We would just like to move into the house.

MALONE I know the homeowner to the east is also willing to grant additional easement, if that factors into things to help our situation. That is an alternative on the table.

BOB KAPLAN ATTORNEY On behalf of Bill Longnecker. He told me to take no position adverse to the City's recommendation that the line be relocated. Also, that if the line is relocated, then that option 4 that Neil had put on the screen is the option Bill will accept. Also, he would like those two manholes to be placed in the Mt. Carmel right-of-way, and if one of those manholes has to be on his property, then he has asked that it be located as near the property line as possible, in the southwest corner. Bill is willing to dedicate the necessary easement to accommodate that.

STEVE PALMER City Water and Sewer for Jerry Blain. It is still our position that we move the sewer line to one of the other options, and option 4 is fine with us.

DUNLAP What is the mean time between installation and failure of a new sewer line? How often would a sewer line that you installed today fail?

PALMER I'm not sure what the average would be. We design them for a 50-60 year life, but they fail due to various reasons, at any time in that period.

MARNELL Have you read the letters to the contractor from W.B. Carter Construction and Nowak Construction?

PALMER Yes.

MARNELL Do you have a comment on those?

PALMER Mr. Blain was saying that what they are saying is probably true, but he is still concerned that the contractor can damage the house if there is no hold harmless agreement in place.

MCKAY I asked for somebody to tell us how far this house was from the sewer line. Have we found out how far it is?

MALONE It is five feet from the house.

PALMER According to the survey from Armstrong Survey, on the south end it is 4.1 feet from the overhang to the centerline of the sewer which would back in five feet from the house on the south end, and this little bit 4.6 to the overhang on the north end to make it 5.6.

MCKAY What about the proposed fireplace?

PALMER The fireplace is 2.8 feet.

JOHNSON If we would vote to move the sewer to this option here, what does that do to the house that is under construction? Can he proceed on? Can the people move into it and then come back and move the sewer or does that shut it down until they get that sewer main moved?

PALMER I think Mr. Blain was wanting the sewer to be constructed before the building sewer connection was completed, and before the vacation was submitted to the City Council for approval.

JOHNSON Do you see a way that we could tie it on now though? I don't know how long it would take to put that sewer main in.

PALMER The problem with tying it on now is you would be tying into the old main, and then when the new line was constructed you would have to go back out.

JOHNSON I understand that, but you are going to have it excavated anyway.

MCKAY That can be done at one time.

PALMER The new sewer would have to be there to tie it onto the new sewer.

MCKAY The people could move in and use the old sewer until you get the new one down, and then while you got the trench open you could move into it.

PALMER I don't think you can keep that trench open during that period between hooking onto the old sewer and then building the new sewer and re-tying to the new sewer.

MCKAY Tie into the existing sewer and when building the new one you put a tee in where it is going to go.

PALMER We could do that.

MALONE I offered to pay a maintenance fee from \$4-5,000 dollars to the City to put in the general fund in case this line ever had a problem 100, 50 or 60 years from now. That money would be available for the City to use to pay for any cost. That seemed to make more sense then disrupting Mr. Longnecker's property or delaying this other family from moving in even longer. There is nothing wrong with the line. It is 4 years old. It is not going to be a problem.

MOTION: To accept the vacation requirement and leaving the line where it is.

DUNLAP moved, **HENTZEN** seconded the motion.

GAROFALO Do we have the authority to do that?

MARNELL Yes we do. We are dealing with the sewer line. In essence we are just vacating an easement and that is the motion.

BISHOP So the motion is to grant the vacation of the easement, which leaves the sewer line? We are not vacating easement where the sewer line is; so then it will be up to the Water Department to say you have to move it?

MARNELL I believe they could do what they wanted if they wanted to pay more...

TAPE CHANGE

MCKAY Do we need to say only within the limits of the house?

MARNELL Is there a document more specific in terms of that?

DUNLAP But we have a second vacation on the same request here.

MCKAY Do we need to say vacate only in the area of the house? I don't know how many feet.

SCHLEGEL The vacation request is for a specific area.

MCKAY That is what I am saying. We do have that legal description? Commissioner Dunlap, are you doing away with the second easement also?

DUNLAP Yes, there is a proposed garage in that area

MARNELL In other words granting both of these - that is under this request.

BISHOP What we keep coming up to is Condition 4 where it says utility representatives need to comment on the acceptability of this vacation in their requirements.

MARNELL We have heard all of that.

KAPLAN I think you're overlooking something here. If you accept Commissioner Dunlap's motion, and I know his intent is not to encroach on Mr. Longnecker's property, but if you simply vacate and do the existing vacation there is nothing to prevent the City from relocating that within the easement which is already on Bill's property and locating the new manhole on Bill's property which was the original objection. I think you put Bill right back in the line of fire unless you do not require the relocation of the line, if that is within your authority.

MARNELL I'm not sure that would be within our authority.

SUBSTITUTE MOTION: I want to support the plan of the two manholes out front, in the setback area, relocating the sewer line, along with temporarily tying this residence into the existing main so that they can move into their home.

JOHNSON moved, **BISHOP** seconded the motion.

MITCHELL I agree to that substitute motion because what we need to do is get this issue resolved, and that is the best solution we have heard in three months.

MARNELL I am going to vote against the substitute motion because I think that sewer can stay right where it is just by vacating that portion of the easement where the house is encroaching, and going on down the line and not cause the additional expense to anybody. It is a regrettable error, but it doesn't require the massive solution we are attempting to do here, and digging that whole area up.

MCKAY I am having problems with...what is presently there is a house, but now we are going to vacate two easements and it says here they propose the garage. The garage is not there presently. We are going to vacate 10-15 feet of an easement, and I am having a problem with that. Being a builder, I can tell you that if this goes through anytime someone makes a mistake, forgiveness is better than permission.

MARNELL I believe that easement to the north is an unused easement.

BISHOP It's a drainage easement.

MALONE The easement for the garage is not the issue. If the 10 foot doesn't work or amount we have asked for, a lesser amount will be acceptable.

SUBSTITUTE MOTION PASSES (7-3) **MARNELL, DUNLAP** and **HENTZEN** opposed.

4-2. VAC2004-14 – Request to Vacate a Ten-Foot Utility Easement.

OWNER/APPLICANT: Smith & Company

AGENT: KE Miller Engineering PA c/o Kirk Miller

LEGAL DESCRIPTION: The 10-foot platted utility easement that runs parallel to the south side of Lots 4, 5 & 7, Block A, the Smithmoor Commercial Addition and the platted 10-foot utility easement that runs parallel to the north side of Lot 8, Block A, the Smithmoor Commercial Addition as recorded with Wichita, Sedgwick County, Kansas.

LOCATION: Generally located on the southwest corner of the Greenwich Road – Harry Street intersection.

REASON FOR REQUEST: Proposed development of the site

CURRENT ZONING: Subject property and all abutting/adjacent properties are zoned "LC" Limited Commercial.

The applicant is requesting consideration for the vacation of the platted 10-foot utility easement that runs parallel to the south side of Lots 4, 5 & 7, Block A, the Smithmoor Commercial Addition and the platted 10-foot utility easement that runs parallel to the north side of Lot 8, Block A, the Smithmoor Commercial Addition. There are no water or sewer in the easements. The site is located in CUP DP-243. The Smithmoor Commercial Addition was recorded with the Register of Deeds January 6, 2000.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the platted utility easements as described in the legal description with the following conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter of notice of this vacation proceeding one time April 15, 2004, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described platted utility easements and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted utility easements described in the petition should be approved with conditions:
- (1) Approval by City Public Works/Strom Water; vacate only those easements as described in the legal description.
 - (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 - (3) All improvements shall be according to City Standards.
 - (4) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Approval by City Public Works/Strom Water; vacate only those easements as described in the legal description.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (3) All improvements shall be according to City Standards.
- (4) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MARNELL moved, **DOWNING** seconded the motion, and it carried (10-0).

4-3. VAC2004-15 – Request to Vacate a Portion of a Drainage Easement.

OWNER/APPLICANT: Bruce & Laura Matthews

AGENT: Baughman Company PA c/o Russ Ewy

LEGAL DESCRIPTION: That portion of the platted 20-foot drainage easement lying in Lot 46, Block 4, as dedicated in the Ridge Port Addition, Wichita, Sedgwick County, Kansas (see attached legal).

LOCATION: Generally located northeast of the 29th Street North – Ridge Road intersection, more specifically north of the 29TH Street North – North Ridge Port street intersection, 3221 North Shore Court

REASON FOR REQUEST: House built into easement

CURRENT ZONING:

Subject property and all adjoining properties are zoned "SF-5" Single-Family Residential

The applicant is requesting consideration for the vacation of a portion of the platted 20-foot drainage easement that runs parallel to the west side of Lot 46, Block 4, Ridge Port Addition. The applicant's house has been built into a portion of the platted easement, as described in the attached legal description. There are no sewer or water lines in the platted easement. The Southern Ridge Addition was recorded with the Register of Deeds June 8, 2004.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted drainage easement as described in the legal description with the following conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 - 1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter of notice of this vacation proceeding one time April 15, 2004, which was at least 20 days prior to this public hearing.
 - 2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted drainage easement and the public will suffer no loss or inconvenience thereby.
 - 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted easement described in the petition should be approved with conditions;
 - 1. Approval by City Public Works/Strom Water; vacate only that portion of the easement where the encroachment occurs.
 - 2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 - 3. All improvements shall be according to City Standards.
 - 4. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Approval by City Public Works/Strom Water; vacate only that portion of the easement where the encroachment occurs.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (3) All improvements shall be according to City Standards.
- (4) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MARNELL moved, **DOWNING** seconded the motion, and it carried (10-0).

4-4. VAC2004-16 – Request to Vacate a Platted Street Right-of-Way and a Platted Sideyard Setback.

APPLICANT/AGENT:

Kenneth & Patricia Fluke
Robert & Janelle Maxwell

LEGAL DESCRIPTION:

The portion of Melody Lane abutting the east side of Lot 5, the East Lynne Addition and the west side of Lot 6, East Lynne Addition, to Melody Lane's point of intersection with East Lynne Avenue. Melody Lane was dedicated on the East Lynne Addition, as recorded with Wichita, Sedgwick County, Kansas.

The platted 25-foot setbacks running parallel to the east side of Lot 5, the East Lynne Addition and the west side of Lot 6, East Lynne Addition, as recorded with Wichita, Sedgwick County, Kansas.

LOCATION:

Generally northwest of the Harry Street – 127th Street East intersection, more specifically north of the Melody Lane – East Lynne Avenue intersection.

REASON FOR REQUEST:

Private use

CURRENT ZONING:

Site and surrounding properties are zoned "SF-5" Single-family residential

The applicants are requesting consideration to vacate the 419.2 – 403.3-feet (x) 60 – 62.2-feet of the Melody Street ROW as dedicated in the East Lynn Addition, located north of the Melody Lane – East Lynne Avenue intersection and abutting the east side of Lot 5, East Lynn Addition and abutting the west side of Lot 6, East Lynn Addition. Melody Lane currently dead-ends into Lot 54, Woodland Lakes Estates 3rd Addition; the Woodland Lakes Estates 3rd Addition was recorded April 4, 2003. The recording of this subdivision eliminated the possibility of extending Melody Lane north. There is sewer and a manhole in the Melody Lane ROW, but no water. Storm Water has requested that the ROW be retained as a drainage easement. The applicants are also requesting that the platted 25-foot setbacks that run parallel to Melody Lane and the east side Lot 5 and the west side of Lot 6, both in the East Lynne Addition, be vacated and replaced with the current UZC's interior side setback for the "SF-5" zoning district, which is 6-foot. Reversion rights of the vacated Melody Lane ROW would go to the applicants. The East Lynn Addition was recorded October 3, 1953.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted Melody Lane ROW and the platted setbacks as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter of notice of this vacation proceeding one time April 15, 2004 which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portions of the platted street ROW and the platted setbacks and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted street ROW and the platted setbacks described in the petition should be approved with conditions:
- (1) Retain Melody Lane as a drainage and utility easement.
 - (2) Vacate the platted setbacks and replace with the UZC's current interior side yard setback for the "SF-5" zoning district, which would move with the newly established property lines.
 - (3) Reversion rights of vacated ROW are with the abutting property owners; the applicants.
 - (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 - (5) All improvements shall be according to City Standards.
 - (6) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Retain Melody Lane as a drainage and utility easement.
2. Vacate the platted setbacks and replace with the UZC's current interior side yard setback for the "SF-5" zoning district, which would move with the newly established property lines.
3. Reversion rights of vacated ROW belong to the abutting property; the applicants.
4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
5. All improvements shall be according to City Standards.
6. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MARNELL moved, **DOWNING** seconded the motion, and it carried (10-0).

❖ **PUBLIC HEARING — ZONING ITEMS**

5. **Case No.: ZON2004-16** – Rhonda and Raedina L. Hupman (owner/applicant) Request Zone change from "SF-5" Single-family Residential to "GC" General Commercial on property described as;

Lots 47 and 48, Block 26, Jones Park Addition to Wichita, Kansas, Sedgwick County, Kansas. Generally located at the northwest corner of 29th Street North and Park Place.

BACKGROUND: The applicant is seeking to rezone .14 acre of platted land located at the northwest corner of Park Place and 29th Street North from "SF-5" Single-family Residential to "GC" General Commercial. The site is developed with a masonry block commercial building that has legal nonconforming rights to uses permitted in the "LC" Limited Commercial district that were established in 1961. In the past, the building has been used as an auction house, and more recently it has been used for "vehicle repair, limited." The applicant desires to use the building for "vehicle repair, general" (auto body repair) which is what triggers the need for the "GC" zoning since that would be an intensification of the site's existing permitted nonconforming use rights.

The building was constructed in the County in 1951. The site was annexed by the City of Wichita in 1961, at which time the site was zoned "AA" One-family Dwelling, under the old code. The building appears to have minimum front yard (29th Street) and interior (west) side yard setbacks. Park Place is built to residential street standards, 16 feet of half-street right-of-way, whereas 29th Street is built to four-lane arterial street standards. Access to the site is from Park Place; there are not any drives on 29th Street.

Surrounding properties are a mix of zoning – "SF-5" Single-family Residential, "LC" Limited Commercial, "GI" General Industrial, "LI" Limited Industrial – and uses – single-family residential, auto repair, auction house and warehousing.

CASE HISTORY: The site is platted as Lots 47 and 48, Block 26, Jones Park Addition.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5" Single-family Residential; residences
SOUTH: "GC" General Commercial and "GI" General Industrial; auction house, industrial
EAST: "LC" Limited Commercial and "LI" Limited Industrial; vehicle repair
WEST: "SF-5" Single-family Residential; residences

PUBLIC SERVICES: Public services are available to the site. 29th Street is a four-lane facility with 30 feet of half-street right-of-way. Adopted Access Management standards call for 60 feet of half-street right-of-way at non-intersection locations. The existing building appears to be located well within 30 feet of the property line; therefore a contingent dedication would be appropriate. The current City Capital Improvement Program does not list any projects for this segment of 29th Street.

CONFORMANCE TO PLANS/POLICIES: The Comprehensive Plan's Commercial Location Guidelines state that commercial uses (including auto-related uses) that are not located in planned centers should be guided to other appropriate areas such as: the CBD fringe, segments of Kellogg; established areas of similar development; and areas where traffic patterns, surrounding land uses and utilities can support such development.

If this request is approved, the *Unified Zoning Code* contains compatibility that would be triggered, such as side and rear yard setbacks (a minimum of 15 feet); dumpsters and refuse receptacles shall be located a minimum of 20 feet from the adjoining single-family zoned property. It does not appear that the site can meet the minimum side yard setback. The parking requirements for "vehicle repair, general" are one space per 500 square feet of building square footage, plus three spaces. The building appears to about 3,000 square feet resulting in an on-site parking requirement of nine spaces.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Surrounding properties are a mix of zoning – "SF-5" Single-family Residential, "LC" Limited Commercial, "GC" General Commercial, "GI" General Industrial, "LI" Limited Industrial – and uses – single-family residential, auto repair, auction house and warehousing.
2. The suitability of the subject property for the uses to which it has been restricted: The building could continue to operate as currently zoned with its nonconforming use rights.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request will introduce more intensive "GC" uses than is generally found in a two-block area located west of Park Place and north of 29th Street. The more intensive uses and zoning are generally located east and south of the application area, although there are properties to the west, north of 29th that have more intensive zoning.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: If the request is denied, the applicant would not be able to operate a body shop at this location, and potentially would suffer an economic loss, however the site's "LC" nonconforming use rights allow a wide range of economically viable uses.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Comprehensive Plan's Commercial Location Guidelines state that commercial uses (including auto-related uses) that are not located in planned centers should be guided to other appropriate areas such as: the CBD fringe, segments of Kellogg; established areas of similar development; and areas where traffic patterns, surrounding land uses and utilities can support such development. The site has been used for auto repair, limited uses in the past, and there is an automobile upholstery shop across the street from this site.

6. Impact of the proposed development on community facilities: Community facilities are in place to accommodate the proposed use.

MOTION: To approve, subject to Protective Overlay #138, and citing the findings in the staff report.

MCKAY moved, **MARNELL** seconded the motion, and it carried (10-0).

6. **Case No.: ZON2004-19** – Robert Marks Request Zone change from “SF-5” Single-family Residential to “LC” Limited Commercial on property described as;

That part of the Southwest Quarter of Section 26, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at a point 294 feet East of the West line of said Southwest Quarter, at a point on the North line of US Highway 54; thence East 132 feet; thence North 141.8 feet; thence West 132 feet; thence South 145.2 feet to the point of beginning. Generally located North of Kellogg and east of 151st Street West.

BACKGROUND: The applicant requests a zone change from “SF-5” Single-Family Residential to “LC” Limited Commercial on a 0.44-acre tract generally located northeast of the 151st Street West and US 54/Kellogg Avenue intersection, on south Wheat Lane. The applicant proposes to operate a palm reading business out of their one-story single-family residence on the unplatted site. A palm reading business is considered a “personal improvement service”. A “personal improvement service” is an “establishment primarily engaged in the provision of informational, instructional, personal improvement and similar services of a nonprofessional nature”. Personal improvements services are permitted by right in the “LC” zoning district.

Properties fronting both the north and south sides of Kellogg Avenue between 151st Street West and 135th Street West are zoned “LC”, “GC” General Commercial, or “LI” Limited Industrial. The nonresidential zoning on the north side of Kellogg, along its frontage, is anywhere from approximately 450-feet to 550-feet deep. The subject site and the adjacent properties east of it, across south Wheat Lane, and north of it are the exception. These properties are zoned “SF-5”; one property is not developed and the other five are developed as single-family residences. This group of “SF-5” zoned properties is approximately 220-feet to 430-feet deep and runs parallel to the abutting nonresidential zoning; the “SF-5” zoning is generally as deep as the abutting nonresidential zoning. Development on the “LC” property, which abuts the subject site’s west side, is a bar/club. The remaining “GC” and “LI” zoned properties along both sides of Kellogg contain vacant industrial buildings, a vacant bar/club, a portable storage rental business, an exotic pet store, a liquor store, a warehouse –retail combination, a concrete/gypsum manufacturing facility, a church, a school, single-family residences and undeveloped land.

North of Kellogg and generally north of the predominately nonresidential zoning along Kellogg is single-family residential development that generally appears to have occurred in two phases. The earliest and smaller phase occurred between the mid 1970s through the mid and late 1980s. This phase is located closest to Kellogg. The second phase is generally north of this earlier phase and has occurred from the late 1990s to the present. Outside these two development phases the remaining few single-family residences were built anywhere from a farmstead built in 1890, to a house built in 1925 and a few more houses built in the 1960s, including the subject site. There are also some duplexes on property zoned “TF-3” north of the site built in the late 1990s.

The subject site has access onto Kellogg from south Wheat Lane, a short, gravel residential road that dead ends into the previously mentioned “TF-3” zoned properties north of the subject site. There are five single-family residences, zoned “SF-5”, on south Wheat Lane, including the property abutting the subject site’s north side, which was built in 1996. The zone change request is appropriate for this area, north of Kellogg and between 135th Street West and 151st Street West, but problematic for this site. At the time of platting City Public Works will requesting dedication of additional right-of-way (ROW) along the site’s Kellogg frontage. The additional ROW would appear to put approximately 20-feet of the house (the part facing Kellogg; the front of the house) into the ROW. Besides the encroachment into the ROW, the house would be another 20-feet into the UZC’s front yard setback for the “LC” zoning district. Public Works has suggested that they would issue a minor street permit, for a nominal yearly fee, that would allow the applicant to use the ROW for their business, until such time that the ROW was needed for improvements to this section of Kellogg, which would include a frontage road. The properties on either side of the subject site have already dedicated ROW along their Kellogg frontage. Another problem would be access. The Commercial Locational Guideline recommends commercial traffic not accessing residential streets. As previously mentioned, current access onto the site is off of south Wheat Lane, an unimproved, dead end residential street. Based on the Comprehensive Plan’s recommended commercial zoning for this area, it is reasonable to anticipate the remaining “SF-5” zoned properties abutting Wheat to request “LC” zoning. Until the time when other zoning change requests are filed for the remaining “SF-5” properties, access to the subject site would remain onto Wheat, with complete access control on the Kellogg frontage. The rezoning of the remaining “SF-5” properties would trigger the need for the ROW to extend the Kellogg frontage road to 151st Street West; this would wipe out the existing house on the subject site and reduce the tract size to roughly half its existing size.

CASE HISTORY: The subject property is not platted and was built as a single-family residence in 1962.

ADJACENT ZONING AND LAND USE:

NORTH:	“SF-5” & “TF-3”	Single family residences & duplexes
SOUTH:	“LI”	US 54/Kellogg, vacant structures & industrial uses
EAST:	“SF-5” & “TF-3”	Single family residences& duplexes
WEST:	“LC”	Bar/club & single family residence

PUBLIC SERVICES: The subject property has frontage on Kellogg and south Wheat Lane. Wheat Lane is a gravel, dead end residential street with open ditches, which has direct access onto Kellogg. Kellogg is 4-lane US highway, US 54, at this location. There are no traffic counts available at the 151st Street West and Kellogg intersection. The site is served by city sewer services, but not by water. The subject site has a well for water.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the area north of Kellogg, between 135th Street West and 151st Street West as appropriate for "Commercial" development. In order for the recommendation of the Land Use Guide to be consistent with the Commercial Locational Guideline regarding commercial traffic not accessing residential streets, the site should be restricted to access onto the Kellogg, rather than south Wheat Lane, which would remain a residential street. This site should be an exception to this guideline until the remaining "SF-5" zoned properties apply for nonresidential zoning. The zoning change requests would trigger the ROW dedication attached to the subject site to allow for the extension of the Kellogg frontage road to 151st Street West; until that time access onto the site would remain off of south Wheat Lane with complete access control onto Kellogg/US 54. The Commercial Locational Guidelines of the Comprehensive Plan also recommends that commercial sites should limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The applicant's zoning change request would trigger access control and dedication of ROW along the Kellogg frontage as well as the UZC's requirements for screening, landscaping, signage and parking. The zoning change request would also create a nonconforming structure by putting approximately 20-feet to 25-feet of the house into Kellogg ROW and another 20-feet of it into the UZC's front yard setback for the "LC" zoning district. A minor street permit would allow the applicant to use the ROW until it was needed for the extension of the Kellogg frontage road. The extension of the frontage road would cause the demolition of the existing house on the subject site.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within a year and the following provisions of Protective Overlay #138.

- A. No off-site or portable signs shall be permitted on the subject property. No signs shall be permitted along the face of any building or along street frontage that faces or is across the street from any property that is in a residential zoning district.
- B. Light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from any adjoining property or property across the street from the subject property that is in a residential zoning district. Light poles shall be limited to a maximum height of 14-feet.
- C. Outdoor speakers and sound amplification systems shall not be permitted.
- D. No buildings shall exceed one story in height with a maximum building height of 35 feet.
- E. A 6-foot screening wall shall be constructed parallel to the north and east property lines where property in a residential zoning district.
- F. Landscaping will per the Landscape Ordinance.
- G. Provide onsite parking on a paved surface, per City Standards.
- H. The following uses shall not be permitted: adult entertainment establishment, group residence, correctional placement residence, group home, recycling collection station; reverse vending machine, and an asphalt or concrete plant
- I. Provide dedication of right-of-way along the Kellogg frontage. The applicant shall be allowed to use the right-of-way, with a minor street permit at a nominal yearly rate. Upon subsequent rezoning of the adjacent properties zoned "SF-5" to a nonresidential zoning the right-of-way will become active for the extension of the Kellogg frontage road. Until that time access to the site will be off of south Wheat Lane and there will be complete access control onto Kellogg as dedicated on the required plat.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by vacant industrial and commercial buildings, undeveloped land and industrial and retail businesses located on the north and south sides of the Kellogg frontage. The most recent single-family residential development is located behind the nonresidential zoning and development along the north Kellogg frontage. The earlier single-family residential development (which is the minority of the single-family residential development) is located along the Kellogg frontage; the subject site is part of this earlier single-family residential development located on South Wheat Lane. South Wheat Lane dead ends into the Auburn Hills 5th Addition, which was recorded with the Register of Deeds June 15, 1998; this effectively prevents a north extension of south Wheat Lane.
- 2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "SF-5" Single Family Residential which accommodates moderate-density, single-family residential development and complementary land uses. The site is currently developed with a single-family residence. Its location along the Kellogg frontage and the nonresidential development along Kellogg have made this site less desirable for residential use in the future.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the conditions of a Protective Overlay which would limit signage, lighting, noise, require six-foot high solid screening, landscaping and prohibit certain uses that are less compatible with surrounding residential development.
- 4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The site is problematic in regards to the effect on the property with the dedication of ROW along site's Kellogg frontage. The additional ROW will create a nonconforming structure, with the existing house approximately 20-feet to 25-feet into the ROW, plus another 20-feet into the UZC's front setback for the "LC" zoning district. This amounts to the City agreeing to recommend the creation of the nonconforming structure. It also puts the applicant into the position of creating a self-imposed hardship on his property, which disallows him from seeking relief in the form of an adjustment or a variance. This could possibly affect the applicant's ability to market the property in the future. Because of the timing of the implementation of the additional ROW, the applicant will be using South Wheat Lane as access onto his sit, which is contrary to the Commercial Locational Guidelines of the Comprehensive Plan.

5. Impact of the proposed development on community facilities: Detrimental impacts on community facilities should be minimal.

WITHDRAWN

- 7a. **Case No.: CUP2003-48 DP267 (Associated with ZON2003-44)** – Alan L. and George R. Rennick, Charles R. and Connie L. Woodard, Trustees of the Charles R. Woodard Trust and of the Connie L. Trust (owner); R & R Realty, LLC, c/o Rob Ramseyer (contract purchaser); Baughman Company, PA, c/o Terry Smythe (agent) Request Creation of Tyler's Landing Commercial Community Unit Plan on property described as;

and

- 7b. **Case No.: ZON2003-44 (Associated with CUP2003-48 DP267)** - Alan L. and George R. Rennick, Charles R. and Connie L. Woodard, Trustees of the Charles R. Woodard Trust and of the Connie L. Trust (owner); R & R Realty, LLC, c/o Rob Ramseyer (contract purchaser); Baughman Company, PA, c/o Terry Smythe (agent) Request Zone change from "SF-5" Single-family Residential to "LC" Limited Commercial on property described as;

A tract of land in the Northwest Quarter of Section 33, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at the Northwest corner of said Northwest Quarter; thence N 89 degrees 29'40" E along the north line of said Northwest Quarter, 1022.00 feet; thence S 00 degrees 30'20" W, 280.00 feet; thence S 89 degrees 29'40" W, 422.00 feet; thence S 45 degrees 28'34" W, 211.20 feet; thence S 89 degrees 44'50" W, 150.00 feet; thence S 00 degrees 15'10" E, 705.00 feet; thence S 89 degrees 44'50" W, 300.00 feet to a point on the west line of said Northwest Quarter; thence N 00 degrees 15'10" E along the west line of said Northwest Quarter, 1129.78 feet to the point of beginning, subject to road rights-of-way of record. Generally located on the southeast corner of 37th Street North and Tyler Road.

BACKGROUND: The applicant is requesting to create DP-267 Tyler's Landing Commercial Community Unit Plan, which would be a 10+ acre development with seven parcels for commercial use. The property is located on the southeast corner of 37th Street North and Tyler Road. All the parcels are relatively small, with two parcels on 37th closest to the intersection being approximately two acres, the southernmost parcel along Tyler Road being 1 ½ acre and the remaining parcels approximately one acre in size.

Proposed uses are all "LC" Limited Commercial uses except adult entertainment uses, group homes, group residential, correctional placement residences, asphalt/concrete plant, private clubs, taverns, and drinking establishments.

Maximum building coverage is 30 percent; floor area ratio is 35 percent. Maximum height is 45 feet. Setbacks are 35 feet for exterior property lines and 15 feet for interior parcels, unless parcels are held in uniform ownership whereby no setback is needed. The C.U.P. includes provisions for landscaping per Landscape Ordinance of the City of Wichita. Lighting is limited to 24 feet in height. A screening wall is required along the interior property line bordering residential use.

The C.U.P. calls for architectural compatibility among the tracts and requires residential character of design. However, no use restrictions are included to reduce the impact of drive-through windows and overhead doors on adjoining residential lots.

Requested signage exceeds standard City of Wichita signage requirements.

The surrounding property is vacant or in suburban use except for the Central Maize Middle School located to the west. The Maize School district has a 100-acre tract for the new middle school plus for future school building expansion. A separate request for commercial and duplex zoning is being heard by MAPC for the property to the north. The property to the south is platted for "SF-5" Single-family Residential use and the property to the southeast is part of a preliminary plat for "SF-5". The land to the northwest is shown as being in the city of Maize. Current use is suburban lots.

CASE HISTORY: The property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-5"; "SF-20"	Vacant, suburban
SOUTH:	"SF-5"	Vacant
EAST:	"SF-5"	Vacant
WEST:	"SF-5"	School

PUBLIC SERVICES: 2002 traffic counts are unavailable. The 2030 traffic projection (ADT) was approximately 4,000 cars per day for both streets. However, these projections did not account for effect of the Northwest Bypass, which would significantly increase traffic on 37th Street North, or traffic from the 100-acre tract school site. Currently, Tyler is improved as a two-lane county arterial street standard. 37th Street North is a township road and is unpaved. No improvements are shown on the capital improvement program for the county or city.

The C.U.P. proposes three points of access on each street for a total of six openings. One proposed opening lacks the minimum separation distance from an existing drive into Central Maize Middle School, and the openings nearest the intersection would need to be right-in/right-out to conform to Access Management Policy.

Other normal public services are available or are in process of being extended to the site.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "low density residential" development.

Commercial Objective III.B encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. The **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed C.U.P. is in conformance with the general recommendations of the Comprehensive Plan. The proposed C.U.P. provisions only follows these objectives with respect to landscaping and shared building materials. It does not require shared internal circulation, combined signage, and exceeds Sign Code freestanding signage limits.

Residential Objective II.A.1 seeks to use community unit plans and other tools to promote mixed use development, higher density residential environment and appropriate buffering. As proposed, the C.U.P. juxtaposes "LC" uses adjacent to low-density residential without intervening buffering of uses. For example, the C.U.P. would allow drive-through windows and overhead doors, omits restrictions limiting the size and intensity of commercial uses to "NR" type standards often found when commercial abuts residential use.

RECOMMENDATION: The proposed lineal arrangement of the commercial parcels along Tyler and 37th Street North increases the length of boundary with the adjoining residential lots and decreases the depth of the commercial parcels. The effect is to increase the length of common boundary where issues of noise, traffic circulation, and the proximity of outdoor work and storage areas and loading docks to residences. The parcels are so narrow that the only locations on the sites for overhead doors and drive-through windows are within 200 feet of residential borders. These factors would suggest that further restriction of uses to the "NR" Neighborhood Retail types of uses, prohibition of auto-related uses, and additional buffering techniques be added to protect the adjoining residential use.

The potential for traffic conflicts are greatest at the peak afternoon times when traffic from the school and the retail uses would overlap. A traffic impact study was not completed, although the site would be anticipated to generate approximately 500 trips during the peak afternoon hour with general shopping center type of development. This rate would be higher if restaurants with drive-through windows or other similar high traffic generation uses were located on the parcels. Transportation improvements are included based on projected needs associated with this level of development. Staff recommends these improvements be required; alternatively, the developer should submit a traffic study to detail the level of improvements prior to approval.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to platting within one year and subject to the following conditions:

- A. APPROVE the zone change (ZON2003-00044) to "LC" Limited Commercial;
- B. APPROVE the Community Unit Plan (DP-267), subject to the following conditions:
 1. Transportation requirements:
 - a. A site plan for shall be required for review and approval by the Planning Director prior to the issuance of any building permits; the site plan shall ensure internal circulation within the parcels and joint use of ingress/egress openings and that private drive openings are not impacted/ blocked by the layout of parking stalls or landscaping.
 - b. The applicant shall provide a guarantee for right-turn accel/deceleration lanes along the perimeter of the property.
 - c. The applicant shall provide a guarantee for center left-turn lane along 37th Street North and Tyler Road.
 - d. Location of the major entrance on Tyler Road shall be located across from the major entrance to Central Maize Middle School.
 - e. Access points shall be in conformance with the Access Management Policy. The access point on Tyler Road shall be a full movement aligned across from the entrance to Central Maize Middle School and serving as a joint access to Parcel 1 and 2.
 - f. The developer shall guarantee 12-½ percent share of cost for the intersection signalization at Tyler Road and 37th Street North.
 - g. Provision of a traffic impact study is not required if the applicant accepts the above recommendations.
 2. No development shall be allowed along 37th Street North until the street is paved to a two-lane county standard.
 3. General Provision #7 shall be amended as follows:
 - a. Add the word "monument" to GP#7A to clarify that one monument sign is permitted for each parcel. Monument signage shall be subject to the following area restrictions:
 - Parcel 1: 150 sq. ft. of signage, located at least 75 feet from southern property line
 - Parcel 2: 150 sq. ft. of signage
 - Parcel 3: 150 sq. ft. of signage
 - Parcel 4: 150 sq. ft. of signage on each frontage (maximum of 2 signs)
 - Parcel 5: 150 sq. ft. of signage
 - Parcel 6: 150 sq. ft. of signage
 - Parcel 7: 150 sq. ft. of signage, located at least 75 feet from eastern property line
 - b. Add to B: "and the total square footage of monument signs shall not exceed 80 % of arterial street frontage."
 - c. Insert the word "Interior" to GP#7E to clarify the provision applies to interior window display signs
 - d. Limit the maximum height of monument signs to 20 feet.
 4. Add to General Provision #10A: "Limited height of light poles, including base, to 24 feet."

5. Add to General Provision #12: "All parcels shall share a similar landscape palette. The landscape buffer shall be provided at a rate of one tree per 30 feet."
6. Add to General Provision #15: "from 37th Street North, Tyler Road, or the rear of residential lots to the east and south."
7. Add to General Provision #16 as follows: "No predominately metal facades shall be allow ed."
8. Add to General Provision #18: "Uses shall be limited to those permitted by-right in the "LC" Limited Commercial district, and recreation and entertainment, indoor, shall only be permitted by separate Conditional Use approval. No single use greater than 8,000 square feet in size except for a grocery store or drug store shall be permitted. Restaurants shall not have drive-through windows located within 200 feet of residential zoning and order boards shall not be audible from the residential property lines. No auto-serving uses, including but not limited to vehicle repair, limited, convenience stores with gas islands, service stations and car washes, shall be permitted on Parcels 1, 2, 6 and 7. No overhead doors shall be permitted within 150 feet of residential zoning and shall not be facing any residential zoning district."
9. The height of buildings shall be limited to 35 feet.
10. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
11. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
12. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
13. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-267) includes special conditions for development on this property.
14. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding property is vacant or in suburban use except for the Central Maize Middle School located to the west. The Maize School district has a 100-acre tract for the new middle school plus for future school building expansion. A separate request for commercial and duplex zoning is being heard by MAPC for the property to the north. The property to the south is platted for "SF-5" Single-family Residential use and the property to the southeast is part of a preliminary plat for "SF-5". The land to the northwest is shown as being in the city of Maize. Current use is suburban lots.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed with single-family use, but the use of the land closest to the arterial intersection for neighborhood serving and small scale commercial uses is typical of development patterns in the Wichita metropolitan area.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental effects on nearby property should be mitigated by the recommended restrictions to lower intensity commercial uses and site the development requirements to buffer the commercial use from the single-family use.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "low density residential" development, which is not in conformance with the zoning requested. The proposed use restrictions and site development requirements seek to follow commercial and residential objectives and locational guidelines of the *Comprehensive Plan*.
5. Impact of the proposed development on community facilities: The traffic increases from the development should be mitigated by the addition of accel/decel lanes and left-turn lanes. Other community facilities are being extended to serve new development in the vicinity. The development, or other residential development in the vicinity, will require paving of 37th Street North.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **MARNELL** seconded the motion, and it carried (10-0).

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8. **Case No.: ZON2004-17** – Consolidated Property Developments, Inc., c/o James Trotter Request Sedgwick County Protective Overlay to prohibit sexually oriented businesses on 2 acres zoned "GC" General Commercial on property described as;

Beginning 150 feet East of the Northwest corner of Lot 2; thence S 170 feet; thence East 75 feet; thence North 170 feet; thence West 75 feet to beginning, Block A, S.J. Properties 2nd Addition to Sedgwick County, Kansas
AND
Lot 2 except the North 150 feet of the West 150 feet thereof and except the East 75 feet of the West 225 feet of the North 170 feet thereof, Block A, S.J. Properties 2nd Addition to Sedgwick County, Kansas. Generally located South of 47th Street South and east of Clifton.

BACKGROUND: The applicant is requesting to prohibit sexually oriented business as defined by the Unified Zoning Code on a property located at the southeast corner of 47th Street South and Clifton. This property is located in the business district of the Oaklawn community.

No specific plans are known for the site. It has been used in the past for an adult entertainment establishment. The Oaklawn community has sought to limit the number of adult businesses in the community. In response, the county added sexually oriented business licensing and zoning restrictions to prohibit adult entertainment establishments within 1,000 feet of schools, churches, parks, residential dwellings or other adult establishment to the Unified Zoning Code in 2001. Existing establishments not in compliance with the new distance requirements could continue operating until June 30, 2004. This establishment would not have been in compliance with the new codes.

In addition to the requested protective overlay, the owner has executed a restrictive covenant to prohibit any adult entertainment establishment or sexually oriented business from operating on the site. The covenant benefits the property, the Oaklawn Improvement District and the public. It benefits successors and assigns and runs with the land until April 1, 2024, is automatically renewable for ten-year periods, and requires written consent from the Board of County Commissioners of Sedgwick County for termination or modification.

Two other adult entertainment establishments had been located in the vicinity, but both are being closed. One was directly west of the corner and the other was south of the applicant's property.

A trucking business is operating on the balance of the property owned by the applicant. A convenience store under separate ownership is in operation at the corner. A small shopping center is located directly across Clifton on property zoned "LC". A residential subdivision zoned "SF-5" is located to the northwest of the intersection. An auto repair business zoned "LC" and a new senior center and day care center are located to the north. An elementary school is located to the south on property zoned "LC" and "LI" Limited Industrial.

CASE HISTORY: The property is platted as S-J Properties Second Addition.

ADJACENT ZONING AND LAND USE:

NORTH:	"LC";	Vehicle repair, limited, daycare and senior center
SOUTH:	"GC", "LC", "LI"	Vacant bar, school
EAST:	"GC"	Vacant
WEST:	"LC", "SF-5"	Shopping center, single-family residential

PUBLIC SERVICES: The property is located on the 47th Street South and Clifton Avenue. 47th is a principal arterial and Clifton is a collector.

Other normal public services are available.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" of the *1999 Update to the Wichita/Sedgwick County Comprehensive Plan*, amended in January 2002, identifies the property as appropriate for "commercial" use.

RECOMMENDATION: The protective overlay prohibits sexually oriented business on a tract that is near residences and an elementary school. This is in conformance with the intent of the Unified Zoning Code amendment in 2001 to eliminate sexually oriented businesses within 1,000 feet of schools, residences, parks and churches.

Based on this information and the information available prior to the public hearing, staff recommends the request be APPROVED for the following protective overlay:

No adult entertainment establishment or sexually oriented business shall be operated on the subject property.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: A trucking business is operating on the balance of the property owned by the applicant. A convenience store under separate ownership is in operation at the corner. A small shopping center is located directly across Clifton on property zoned "LC". A residential subdivision zoned "SF-5" is located to the northwest of the intersection. An auto repair business zoned "LC" and a new senior center and day care center are located to the north. An elementary school is located to the south on property zoned "LC" and "LI" Limited Industrial. Two other adult entertainment establishments had been located in the vicinity, but both are being closed. One was directly west of the corner and the other was south of the applicant's property.
2. The suitability of the subject property for the uses to which it has been restricted: The property is suitable for "GC" General Commercial use and many other "GC" uses are allowed on the property.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed protective overlay will not have detrimental effects.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The existing zoning is in conformance to the Comprehensive Plan and the protective overlay is in conformance to the policies of the Unified Zoning Code.
5. Impact of the proposed development on community facilities: None.

DALE MILLER Planning staff presented the case.

GAROFALO Why do we have to do this when I thought this was the one property that was prohibited under the action taken by the County.

KAREN DURANLEAU, ASSISTANT SEDGWICK COUNTY COUNSELOR It is an extra protection. That area at 47th and Clifton has traditionally been a sore spot for the Oaklawn residents, and they have been trying to clean that up and they are trying to help them to do that.

HENTZEN The present zoning that is there and will be left there as "GC" General Commercial, right?

DURANLEAU Yes, this doesn't change that zoning category.

HENTZEN Who is requesting this change?

DURANLEAU Consolidated Property is requesting this zone change. They are the applicants. The County supports this but we are not initiating this particular request.

HENTZEN If a case comes up and they don't have the zoning that they want and County rule makes it close down, the adult video store, it wouldn't prohibit the owner from asking for different zoning that is on his property now?

DURANLEAU It seems to me that if he is voluntarily requesting the overlay he could come and request it to be removed.

MILLER If the question is, would this Protective Overlay in any way prohibit from changing the base zoning on the property? The answer is, no. He would be able to come in and request different zoning; it is just if this is approved, he would never be able to have a sexually oriented business on there no matter what the zoning is.

MARNELL Is the applicant present?

LINDA ULRICH, 5010 Meadowview, Wichita, KS 67216, Resident of Oaklawn I am in favor this overlay. We are trying to clean up the area.

MOTION: To approve, subject to staff comments and citing the findings in their report.

GAROFALO moved, **JOHNSON** seconded the motion, and it carried (10-0).

9a. Case No.: CUP2003-65 DP273 (Associated with ZON2003-74) – Property Management Corporation, c/o Rhonda J. Butler (owner); Baughman Company, PA, c/o Terry Smythe (agent) Request Creation of The Prairie Pond Plaza Community Unit Plan on property described as;

and

9b. Case No.: ZON2003-74 (Associated with CUP2003-65 DP273) - Property Management Corporation, c/o Rhonda J. Butler (owner); Baughman Company, PA, c/o Terry Smythe (agent) Request Zone change from "SF-5" Single-family Residential to "LC" Limited Commercial on property described as;

A tract in the West Half of the Southwest Quarter (W/2 SW/4) of Section 24, Township 27 South, Range 2 East of the 6th P.M., in Sedgwick County, Kansas, described as follows: BEGINNING at southwest corner of the Southwest Quarter (SW/4) of said Section 24; thence North, along the West line, 658.3 feet; thence East 1317.8 feet, more or less, to a point on the East line of the West Half of the Southwest Quarter (W/2 SW/4), which is 659.8 feet North of the Southeast corner of said West Half of the Southwest Quarter (W/2 SW/4); thence South 659.8 feet; thence West, along the South line of said Southwest Quarter, to the POINT OF BEGINNING, except that portion taken for street right-of-way. Generally located at the northeast corner of Kellogg and 143rd Street East.

BACKGROUND: The applicant proposes a 17-acre C.U.P located on the northeast corner of Kellogg and 143rd Street East with six development parcels. The two larger parcels are approximately 6 acres and 4.5 acres, and four smaller parcels are approximately 1 acre.

Proposed zoning for Parcels 1, 2, 4, 5 and 6 is "LC" Limited Commercial. Proposed uses include: banks or financial institutions; assisted living; retail, general and restaurants, including drive-through restaurants. Vehicle sales, outdoor, would require a separate amendment to be allowed.¹ Additionally, the applicant has agreed to prohibit overhead doors and drive through windows within the northern 100 feet of the parcels.

1 Other permitted uses would be: single-family residential; duplex; multi-family residential; cemetery;

Many uses are prohibited, including the following uses: group residence; correctional facility; correctional placement residence; group home; halfway house; recycling collection; animal care; bed and breakfast inn; funeral home; heliport; kennel; marine facility; monument sales; night club; pawn shop; recreational vehicle campground; secondhand store; tavern and drinking establishment; asphalt or concrete plant; mining or quarrying; oil or gas drilling; rock crushing; solid waste incinerator; agricultural research; and adult entertainment establishments and sexually oriented business.

Proposed zoning for Parcel 3 (0.98 acre) would be "NR" Neighborhood Retail. This is the parcel nearest the Park East Addition residential area along 143rd Street East. The "NR" zoning restricts the intensity of use to smaller scale retail, prohibits drive-through windows with restaurants, and eliminates auto-related uses such as service stations, convenience stores and vehicle repair.

The C.U.P. proposes signage per the Sign Code, with no flashing, moving or rotating lights allowed and typical C.U.P. signage requirements.

Architectural design, color (with earth tone as predominate color) and texture are to be consistent, except that this can be waived if the landscaped street yard and buffer is increased to 1.5 times the minimum ordinance requirements. All parcels are to share similar or consistent lighting limited to 14 feet in height within 200 of residential zoning and 20 feet on remainder of the tract. A masonry screening wall six to eight feet in height is proposed for north and east property lines. Exterior audio systems that project sound beyond the boundaries of the C.U.P. are prohibited.

Maximum building coverage is 30 percent; maximum gross floor area is 35 percent. Building height is 45 feet, which is ten feet taller than the adjoining zoning. Building setbacks are 35 feet for northern property line, the streets and between Parcels 1 and 2. Setbacks are 15 feet between interior parcels but can be eliminated if contiguous parcels are developed in same ownership. Cross-lot circulation is required.

The site has a large existing pond, approximately an acre in size, located roughly on the south of the site along the boundary of the two large parcels. Actual location of the drainage easements and reserves will need to be identified as part of platting.

The property to the north and south is zoned for single-family use and in single-family development with large lots ranging from two third acre to over an acre. Park East Addition borders the proposed C.U.P. on the north and Springdale Lakes Addition is located south of Kellogg. The land to the east is zoned "SF-20" and vacant. The land to the west of 143rd Street East is platted and zoned for commercial use, with a 100-foot buffer reserve of "SF-5" along the street that is also a pipeline easement. The three parcels closest to Prairie Pond Plaza are approved for "LC" use except for group homes, group residential, correctional placement residences, private clubs, taverns and drinking establishments.

CASE HISTORY: The property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5"	Single-family residential
SOUTH: "SF-20", "SF-5", "GO"	Single-family residential, vacant
EAST: "SF-20"	Vacant
WEST: "LC", "NR", "SF-5" Vacant	

PUBLIC SERVICES: Two openings are shown on 143rd Street East, and one joint access point onto US 54 (Kellogg) on the eastern edge of the C.U.P. shared with the adjoining property. This opening is subject to KDOT closure at time of construction of Kellogg Drive and the median is subject to KDOT closure at this opening at any time.

A traffic study and addendum, Traffic Impact Study-Prairie Pond Plaza, (Traffic Engineering Consultants, Inc.: March 2004) and Traffic Impact Study Addendum No. 1-Prairie Pond Plaza and Lusk Properties Dev. (Traffic Engineering Consultants, Inc.: April 2004) analyzed the impacts of the proposed development on surrounding roads. The study projected traffic volumes of 43,707 cars per day at full build-out for both developments. The study modified projected volumes by estimated share of pass-by trips and internal capture trips. From this data, the study analyzed the p.m. peak volumes to define the level of transportation improvements to accommodate level of service "C". These improvements are: dual southbound left turn lanes from 143rd to Kellogg, dual left turn lanes from Kellogg to 143rd, exclusive southbound right turn lane from 143rd to Kellogg, exclusive westbound right turn lane from Kellogg to 143rd and traffic signal modification as 143rd Street East and Kellogg.

Other normal public services are available.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "commercial" use.

church, college or university, community assembly, convalescent care facility, day care, golf course; government service; hospital; library; parks and recreation; safety service; school; utility, minor; ATM; broadcast/recording studio; car wash (this would be a Conditional Use for Parcel 3 and northern 200 feet of Parcels 1 and 2); construction sales and service when primarily a retail business; convenience store; hotel; medical service; nurseries and garden centers subject to the "LC" requirements; office; parking area, commercial; personal care service; personal improvement service; post office substation; printing and copying, limited; recreation and entertainment, indoor; vehicle repair, limited; vocation school; wireless communication facility subject to the "LC" requirements; agricultural sales and service.

Commercial Objective III.B encourages future commercial areas to “minimize detrimental impacts to other adjacent land uses”, with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the “Wichita Land Use Guide”, and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. The **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed C.U.P. is in conformance with the Comprehensive Plan commercial objective/strategies and land use locational guidelines for minimizing detrimental impacts and planned development.

Residential Objective II.A.1 seeks to use community unit plans and other tools to promote mixed use development, higher density residential environment and appropriate buffering. The proposed C.U.P. would allow for residential development meeting these objectives.

RECOMMENDATION: The proposed use is in conformance with the *Comprehensive Plan* and with the **Commercial Locational Guidelines** and **Residential Objectives** of the *Comprehensive Plan* and it is located along Kellogg, which is one of the main commercial corridors in the metropolitan area. The limitation of Parcel 3 to “NR” use, the limitations on the “LC” uses and extra protections for the northern 100 feet, and other site requirements reduce the potential intensity of development and mitigate impacts on nearby residential areas.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to platting within one year and subject to the following conditions:

- A. APPROVE the zone change (ZON2003-00074), subject to platting of the entire property within one year.
- B. APPROVE the Community Unit Plan (DP-273), subject to the following conditions:
 1. Transportation Improvements:
 - (A) The applicant shall agree to share the cost of the following improvements, with details to be determined at time of platting. Access controls: dual southbound left turn lanes from 143rd to Kellogg, dual left turn lanes from Kellogg to 143rd, exclusive southbound right turn lane from 143rd to Kellogg, exclusive westbound right turn lane from Kellogg to 143rd and traffic signal modification at 143rd Street East and Kellogg.
 - (B) Access controls shall be in accordance with the Access Management Policy.
 - (C) A site plan for shall be required for review and approval by the Planning Director prior to the issuance of any building permits; the site plan shall ensure internal circulation within the parcels and joint use of ingress/egress openings and that private drive openings are not impacted/ blocked by the layout of parking stalls or landscaping.
 2. Add a general provision to state: Prior to issuing building permits, a plan for a pedestrian walk system shall be submitted and approved by the Planning Director. This walk system shall link sidewalks along 143rd and between the proposed buildings as determined necessary by the Planning Director.
 3. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
 4. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
 5. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
 6. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-273) includes special conditions for development on this property.
 7. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property to the north and south is zoned for single-family use and in single-family development with large lots ranging from two-third acre to over an acre. Park East Addition borders the proposed C.U.P. on the north and Springdale Lakes Addition is located south of Kellogg. The land to the east is zoned “SF-20” and vacant. The land to the west of 143rd Street East is platted and zoned for commercial use, with a 100-foot buffer reserve of “SF-5” along the street that is also a pipeline easement. The three parcels closest to Prairie Pond Plaza are approved for “LC” use except for group homes, group residential, correctional placement residences, private clubs, taverns and drinking establishments.
2. The suitability of the subject property for the uses to which it has been restricted: The area is located along Kellogg, which is one of the main commercial corridors in the metropolitan area and is shown on the Comprehensive Plan for commercial use. The property is less suited for its current restriction to residential use, given these conditions.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed use is in conformance with the *Comprehensive Plan* and with the **Commercial Locational Guidelines** and **Residential Objectives** of the *Comprehensive Plan*. The limitation of Parcel 3 to “NR” use, the other use limitations on the “LC” parcels and extra protections for the northern 100 feet, and other site requirements reduce the potential intensity of development and mitigate impacts on nearby residential areas.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The proposed development is in conformance to the *Comprehensive Plan*.

5. Impact of the proposed development on community facilities: According to the traffic study, the traffic impacts would be handled by the proposed traffic improvements.

DALE MILLER Planning staff presenting the staff report. Part of the discussion involved, if it is appropriate to have "LC" Limited Commercial zoning in this northern half that backs up against these residences? I think the residents have an interest in seeing that somewhere, about half way down the (parcel), the "LC" Limited Commercial be constricted to this frontage here (southern portion of the parcel). The applicant has indicated that they are willing to look at something in this area (northern 100 feet of the parcel)...to restrict drive-thru type uses to the southern half, but they would like to retain the "LC" Limited Commercial zoning across here (the northern half of the parcel) as well.

MARNELL On the land just across of 143rd to the west, when you had the map up there, there was a strip that looked white. Is that going to be zoned or is that "LC" Limited Commercial?

TERRY SMYTHE WITH BAUGHMAN COMPANY It is a reserve for landscaping.

DUNLAP On the proposed plat, Kellogg Drive just stops. We don't have a cul-de-sac, and we don't have an exit, it just stops. There isn't an intended application east of here is there?

MILLER Not at this present time, but it would not be unusual to get a portion of a frontage road, and start getting those segments as they come in.

DUNLAP I am one of those people who were here when this came up, and it seemed to me we had an entrance driveway at that point there, and that was one of the major areas of contention.

MILLER I believe it showed up on the slide. There was a drive on Highway 54.

GAROFALO Does the aerial show how close the homes are on the north?

MILLER The lot line would be the red tape. Maybe the neighbors or the applicant could better estimate what the actual distance would be.

BISHOP I know that on previous commercial C.U.P.'s there was something that was worked out relative to 100 feet from any kind of drive-thru. If something like that were to be here, would that restrict it to the southern edge of it?

MILLER What I would refer you to is the C.U.P. plan. That is showing what looks like a 50 foot building setback so if you were trying to get some idea what 100 feet would like, you would double it.

MCKAY There is a pond in there right now. Are they proposing to fill that in?

MILLER I will let the applicant explain.

TERRY SMYTHE BAUGHMAN COMPANY That pond is going to stay there. That is the approximate size of the retention requirement that we are going to have. Now, Elizabeth, your question about 100 feet to the north; we originally, on the C.U.P., had a 50 foot building setback. What the applicant has agreed to with staff is that within 100 feet of the north property line that we would not have any overhead doors or drive-thru reader board type of facilities in that northern portion.

Some of that is what we presented to the D.A.B. meeting the other night, and several homeowners are here to discuss some stuff. The D.A.B. meeting heard discussion Monday night, and did not make a determination. What they did was have a public record established, which is this hearing, and then based on that hearing, I am to sit down with a couple of their homeowner representatives and go over any fine tuning, if there is any to do and then present it to the D.A.B. Board and go on with your recommendation one way or the other to the City Council. Nobody, that I remember, spoke that they did not want any commercial within a mile. I think the statement was that there isn't any developed commercial within a mile from where they are today. The property across the street is zoned commercial, but not developed yet.

This is in compliance with the Comprehensive Plan Locational Guidelines. The landscape ordinance still applies; noise, lightening ordinance still applies. We have agreed to all lights shielded directly down, not just to the north and to the east. There is some indication from the owners to the south of the property across what would be the future flyover would like to see those lights shielded down also. We have had a traffic study done signifying what needs to be done on 143rd at total build out, so we have both the east and west sides of 143rd planned, in terms of street improvements that need to be done.

The question about the dead end road over there, and I am sure during the platting process that we will have to have a temporary cul-de-sac. On our C.U.P. you see a 30-foot access easement on that side. The owner to the east has basically a farm/residential entrance off of Kellogg at that location. Half on his side and half on our side, so we are making reference that we don't intend to close his driveway off obviously, but that we have no access to Kellogg itself. So the 30-foot drive on the east side of our C.U.P. is just a reference that he still has his access to Kellogg. Per KDOT agreement, they will shut him off.

I think we have agreed to most of the conditions based on the D.A.B. Board discussion the other night. I think we are down to maybe two or three items. I think it would be better probably for some of the owners to describe those first. D.A.B Board recommendation was to have the applicant and the homeowners to sit down and fine-tune these things before it goes to WCC.

BISHOP Under the conditions for recommendation for approval there are a lot of transportation improvements that are listed, and it looks complex, and I assume if those are agreed to they would be included at the time of platting?

SMYTHE Correct. We can't build a shopping center that nobody can get to, so we will agree to the traffic improvements that need to be done.

DUNLAP The crossing that is now available from the south side to westbound Kellogg, does KDOT intend to close that right-of-way? Do you know?

SMYTHE The last discussion that I had with KDOT is that they can close that at anytime they feel justified. They did not tell me they plan on closing it within the next year; same with the whole discussion how Kellogg and the future flyover expressway gets done at this intersection. The only thing they have committed to me is that when they do Kellogg that they are pretty sure it will be a flyover because they have to go over the drainage ditch to the west and come up and over. We don't know where the off ramps will be.

GAROFALO I have a recollection of this case from years ago, what happened to it? Was it approved?

SMYTHE No, it was in the County at that time, and the County turned it down because of the concerns about the bridge over the turnpike. That is my assessment of it, but everything was agreed to. I think at that particular time we did a traffic study but something over at the County had them indicating that they didn't think that bridge was okay, and based upon our traffic consultant, it is okay. That bridge can handle 16,000 trips per day, but it did die at the County level.

BISHOP At the 143rd Street area, is that an urban type street?

SMYTHE It is a two lane county rural standards.

BISHOP No sidewalks or pedestrian access?

SMYTHE When they did the intersection they did widen out some of the lanes going north and south, but it only goes maybe 100 feet to the north, and then it goes into the typically county road.

RICHARD WARRICK PRESIDENT, 14205 E. Gilbert, Wichita, KS 67230 President of Springdale Lakes Homeowners Association We have 100 home tracts on the southwest side of the intersection of 143rd Street and Kellogg. I was at the D.A.B. meeting and he addressed most of our concerns. The lightening was one item.

There is one other item of concern to us. On the Condition #17 where it says all building exteriors within the entire C.U.P. shall share a consistent architectural design, earth tone colors, and texture. But this provision may be waived provided that all building exteriors within each parcel share a consistent architectural design, color, and texture, etc. The problem with that is that we have six parcels in this subdivision and four of which are limited to a maximum of one building. If you allow a waiver parcel by parcel, then you will have six different building designs side by side. So we would propose architectural consistency for all six of the parcels, and no chance of this provision being waived.

KENT WEIXELMAN, 122 Cardinal Ln, Wichita, KS 67203 I am representing the Park East Addition. We had about 20 people at the D.A.B. Board on Monday night. There is no commercial development within a mile of where we are. It is all single-family development out there. We unanimously oppose the rezoning. The restrictions we would ask for are the building height be limited to 35 feet. We want the wall between us and the development to be 8 foot; currently it is listed to 6-8 feet. We would like to request a green barrier. No drive-thru business, and no car lots. Most importantly, we ask the City staff and MAPC to be consistent with the restrictions that were required when the Meadowlands C.U.P. was rezoned on the west side of 143rd Street, Z3340 (DP248). The neighborhood retail parcels have been placed nearest the single-family development across 143rd and Park East to reduce intensity of commercial activity to this neighbor in the area. Additionally a 100-foot landscape buffer is proposed. We ask that the tracts closest to Park East be general office or neighborhood retail and that we are afforded the same 100 foot barrier that was provided during the Meadowland rezoning.

We also have two recommendations in regard to traffic; the right-in/right-out on Kellogg, we think the right-in will work but we don't think the right-out will work. Most of the traffic coming to this development, we believe, will come from Kellogg, and we anticipate them going left which will be a problem or turning right into our neighborhood and make a u-turn and go back around. We would ask that be closed or be made a right-in only. Prior to additional development on 143rd Street, it be widened to 4 lanes, particularly the bridge at Central and 143rd is probably the most dangerous bridge in the City.

HENTZEN Do you have a Homeowners Association?

WEIXELMAN Yes, I am one of the Commissioners on the Association.

HENTZEN I see you requested the wall on the north side to be 8 feet tall, who is going to take care of that land north of the wall between you and the business? It will probably be on the property line.

WEIXELMAN I don't understand the question.

HENTZEN Because if nobody takes care of it, it is not a good idea.

WEIXELMAN I would concur with that.

DUNLAP Just for clarification, no drive-thru businesses allowed; what is the basis for that request?

WEIXELMAN Two things, the additional car traffic, carbon dioxide from the exhaust setting in long lines from drive-thru and the noise from the outside speakers.

DUNLAP What about the car dealers?

WEIXELMAN The lightening, and their lights seem to be on 24 hours a day.

DUNLAP The restrictions they are proposing for shielding would help?

WEIXELMAN That would help, but I would still anticipate a car dealership are some of the most well lit businesses around the City.

MCKAY Have these concerns been reviewed with the applicant?

WEIXELMAN We discussed it at the D.A.B.; so to some measure, yes.

RICHARD RANDALL, 371 Hillsdale Drive, Wichita, KS 67203 We built our home in Park East in 1958. So we have been there 46 years. I am opposing this request primarily because the problems that were raised in 1997 when the County rejected this plan still exist. We still all have the same objections that we had then. The Park East area has 45 homes, most on 1-2 acre lots so it is not a densely populated area. Across Kellogg was Springdale Lakes Estates, and that of course is a large area now with lots of homes.

We have a lot of developing areas out there. At 143rd Street is blocked at the north end pretty much with a very narrow bridge over the Turnpike and it goes right down to the light. Yesterday as I came south the cars were backed up over this bridge. The bridge is not a normal width it is very normal. There have been several accidents out there. Kellogg is dangerous because it is too narrow and should be wider when you go up to the lot and the traffic is moving your car just jumps. I think the future intention is to widen 143rd Street but with all of the development that has been approved along 143rd Street I am sure that it is going to be absolutely choked. There will be several stop lights along that 1 mile between Kellogg and Central both ends are dangerous. So we have the traffic hazards, which are not solved, the Turnpike bridge and these narrow turn lanes on Kellogg. There will be a drainage problem from the paved areas here. Property values will decrease. This is not a good plan and to me it is really dangerous for us who live out there and we would like to see this proposal should be denied until 143rd Street traffic problems are resolved.

BARFIELD Are you speaking as an individual or Park East Neighborhood Association.

RANDALL I am speaking as an individual. We are considering a protest.

LAWRENCE BANNON, 6505 S. Stagecoach Street, Wichita, KS 67230 I live in the Springdale East 2nd Addition which basically I represent about a 10 homeowners. We don't have a Homeowners Association so I was nominated to be here. The main problem we are concerned about is that the property management back in 1997 went through this whole thing with the County, but they still have not come up with a reasonable description of what they are going to put them. So it is like offering him a blank check. The current water problems that they have now draining out of that pond; it is not unusual to see the pond spilling underneath Kellogg about anytime you want to go there. What this has done to Springdale Estates is it floods out houses in the area and then following it on down to Springdale East in which I am in, and it also back up in there and does some flooding as well on Timberlakes to the south of us. Nothing has been addressed other than enlarging the pond and just enlarging the pond is not going to make anymore difference when you add all the cement and stuff that they want.

Another area that is really a problem is traffic. We have had four accidents within the last year to two years, and most of the people in those accidents have been killed because of the high rate of speed. There was a four-car accident yesterday but most of these have come from trucks running the stoplights. So when you say that you are going to improve the stop lights to solve the traffic problem that can be done maybe, maybe not. If you have got somebody out there in a big rig going 60-65 mph and you live in that area and he rides your bumper and you don't know whether you are going to be able to turn or you are going to be pushed out of the way before you get to turn it makes you wonder a little bit. We don't need more traffic in the area. As a morning or evening if you want to turn out of our access on the south side onto Kellogg you have no lights all you have is a stop light and you just go and quite honestly when people start to go they get impatient after they have set through 2-3 stop lights and that is when the accidents are going to occur.

When you are going to have lights between 14-20 feet high that really doesn't make a lot of sense to me if you are going to have buildings that are going to be up to 45 feet high. We know nothing more about that than that is it. Mr. Smythe mentioned that there was not going to be an exit going on Kellogg and the way I read the instruction it said that there was until KDOT wanted to close it. That is just another area that is begging for more accidents. With the building size and height at the intersection of 143rd and Kellogg would make that basically a blind intersection when you are coming to Kellogg from the north.

BISHOP Are there no protected left hand turns. Let's say you are going north on 143rd and you want to turn left on Kellogg is there not left hand turn light?

BANNON There's a stop light there. And even though you put off of Kellogg and the other way south going from Kellogg to east. The whole development needs more planning we don't want it to go to commercial but with not knowing what is going in there we are disagreeing with the development at this time.

BARFIELD Mr. Bannon, on that aerial there, can you show us about where are the 100 homeowners you are representing.

SMYTHE The pond I talked about as you can see is on the aerial that is basically the size that I have to have out there to detain water. Downstream we satisfied everybody at Springdale and we did the Meadowland Addition across street we are going to have to abide by the same rules and regulations for the drainage as we did there that will not be a problem.

There has been a Traffic Study done. All of these improvements are associated with the development going on out here when this development starts occurring these people put up letters of credit will have to start participating in the cost of those improvements. Also the existing light that is out there on Kellogg will probably have to be modified for dual-left turn lands and additional lights to understand that you are turning both directions at the same. So there will be more improvements than you just see on the ground

by the traffic study. There is also indication based upon our layout that we tie into the one across the street so the light at Park East that we had to guarantee for Meadowlands may now go south to this intersection.

Let me address some of these neighborhood concerns: 1) Building height 35 feet we agree to. 2) The wall development of 8 foot we are saying 6-8 foot is the normal we will stay at 6 foot and we will do the additional 1.5 times the landscape requirement. 3) The green barrier is the Landscape Ordinance. 4) No drive-thru businesses are allowed we think staff has a good ideal of limiting the drive-thru from the north 100 feet of the property line and we will agree with staff comments. 5) No car dealerships allowed. We will agree with that now knowing full well that we always have to come back anyway to do a Conditional Use to do a car lot. 6) The tracts of land on the north end of the development be limited to general office and neighborhood retail. We don't believe that is a good idea. We still think "LC" Limited Commercial uses with 35 uses eliminated on Parcels 1 and Parcels 2 is understandable and justifiable. 7) The 100-foot buffer between our development and Park East that has never been done before. I understand why we did that across the street is because it was all pipeline easement and you can't build on it anyway so we have to do that and here it just doesn't make sense and again we think the 1.5 time Landscape Ordinance requirement will help modify things to the north. 8) The architectural control was brought up and we will agree with that. 9) Homes to the north are about 100 feet away from their property line and with our 50-foot building setback we are talking 150 feet between buildings. 10) The right-in/right-out is a platting issue.

BISHOP The stub for Kellogg Drive, is that going to have access to Kellogg until KDOT makes you close it?

SMYTHE We will not have access to this farm/entrance residential use that this owner has over there. The survey had indicated that there was an agreement between these two property owners to give the owner to the east access to Kellogg at that point. It is not our intent to have our frontage road to dump out to there nor do we have rights by KDOT to have that happen. KDOT condemned our rights to Kellogg off this property when they condemned it years ago.

BARFIELD In the future there will be two lanes on 143rd?

SMYTHE Talking about if I am going south on 143rd and I want to go toward Andover...

BARFIELD No, you are going east of Kellogg and go onto 143rd, you are talking about two left turn lanes.

SMYTHE I believe that is what the traffic study indicated.

BARFIELD So does that show improvements on 143rd Street?

SMYTHE Yes, 143rd will be widened with two lanes. You will have to look at the traffic study. There will be enough capacity. All the improvements will be put in there, and there is enough volume on 143rd to handle dual left turn lanes going north bound.

BISHOP That question that was brought up in terms of architectural controls.

SMYTHE I believe all the Parcels, except Parcels 1 and Parcels 2, are only permitted one building. So there I can only have one building so I can't disagree with myself. Now Parcels 1 and Parcels 2, the big parcels, I think I have indicated there may be a maximum of 3 building on both. So what I am saying is that between Parcels 1 and 2 we would agree to overall architectural controls on Parcels 1 and Parcels 2 so that they look the same. The other 3 Parcels are out parcels and are generally restaurants, and we want to make sure that there is no intent to make all the restaurants look identical but that is the normal thing that John handles. We would agree to the architectural compatibility on Parcels 1 and Parcels 2 if there were multiple buildings.

MOTION: To approve, subject to staff comments and the additional comments provided by the applicant, and citing the findings in their report.

MITCHELL moved, **DOWNING** seconded the motion.

BISHOP Does that includes the concession made in terms of architectural controls on Parcels 1 and Parcels 2?

MITCHELL Yes.

MARNELL And the setback at the north side.

MITCHELL Did he agree to 100 feet? I didn't hear that.

MARNELL No, he did not.

BISHOP Yes.

MARNELL I am sorry, that was the drive-thru that would be beyond 100 foot.

SMYTHE We would have 50-foot building setbacks per the drawing right now, and we agree to 100-foot further setback for the drive thru.

MARNELL Include that in the motion?

MITCHELL Yes, include that in my motion.

DOWNING Second approves.

GAROFALO There was some other concerns, building height to be limited to 35 feet

MCKAY Forty -five feet is what they have.

GAROFALO To be limited to 35 feet isn't that what you agreed to?

SMYTHE Yes.

GAROFALO And the 6-foot wall plus 1.5 times Landscape requirement for buffer and no car dealership.

DUNLAP I appreciate what the homeowners have done since the last time in 1997 they said absolutely not. This is where we have planned for a long time to put commercial development on Kellogg. Now that the Northwest Express and K-96 is complete, and this is about the only piece of property left between Greenwich and the county line can be developed. The traffic is not in the control of the developer, and the size and shape of 143rd Street. KDOT will not change Kellogg unless they see the need to do so. The drainage issue is totally different than it was in 1997 because we have a different governing body, because this went to the County before and the City's drainage plan is different.

MOTION CARRIED: 10-0

The Metropolitan Area Planning Department informally adjourned at 3:53 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2004.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)